



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Gold Seal Corporation

File: B-245824

Date: January 28, 1992

Howard A. Pollack, Esq., Braude & Margulies, P.C., for the protester.
Bill Cosmos Giallourakis, Esq., for D&K Construction Company, Inc., an interested party.
Lester Edelman, Esq., and Mary S. Byers, Esq., Office of the Chief Counsel, Army Corps of Engineers, for the agency.
Paula A. Williams, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Low bid is responsive where bidder submitted its bid on the original bid schedule instead of an amended bid schedule since the bidder acknowledged the amendment, and the change in the bid schedule language merely clarified a requirement which was clearly contained in the original solicitation specifications.

DECISION

Gold Seal Corporation protests the proposed award of a contract to D&K Construction Company, Inc. under invitation for bids (IFB) No. DACA51-91-B-0066, issued by the Army Corps of Engineers to remove and replace underground storage tanks (USTs), at the Military Ocean Terminal, Bayonne, New Jersey. Gold Seal contends that D&K's bid should be rejected as nonresponsive because while it acknowledged an amendment containing a bid schedule which referenced the removal and replacement of certain of the USTs, D&K submitted its bid price on the original bid schedule which only referenced the removal of these USTs.

We deny the protest.

The Corps issued four amendments to the August 23, 1991, IFB for the removal and replacement of various USTs as set forth in the specifications and engineering drawings. Amendment No. 4, issued on September 17, deleted the original bid schedule A, added a new bid schedule A, and made technical

changes to the IFB. Of particular relevance to this protest is the amended bid schedule A, base bid item No. 1, which required a lump sum price for:

"[l]abor and materials for removal and replacement of underground storage tanks (UST) and associated work, complete. UST Nos. 14, 15, 29, 30, 31, 32, 33, 34 & 35." (Emphasis added.)

Five bids were opened on September 23. After the apparent low bid was rejected for reasons not germane to this protest, D&K with a bid of \$1,700,000 was in line for award. The protester's bid of \$1,790,000 was next low. D&K's bid included an acknowledgment of all four amendments but its bid prices were submitted on the original bid schedule A. On September 25, Gold Seal filed this protest challenging the Corps' proposed award to D&K.

Gold Seal asserts that D&K's bid is nonresponsive for failure to submit its bid on the amended bid schedule A, which sought a bid price to "remove and replace" the tanks specified in amendment No. 4. Gold Seal argues that the amendment is material because it changed the original work required for base bid item No. 1 from "removal" to "remove and replace" the tanks thereby increasing the scope of work, and that by using the original bid schedule D&K obligated itself only to "remove" the tanks, rendering its bid nonresponsive.

A bid is responsive as submitted when it offers to perform without exception the exact thing called for in the solicitation and acceptance of the bid will bind the contractor to perform in accordance with all the IFB's material terms and conditions. Rocky Ridge Contractors, Inc., B-224862, Dec. 19, 1986, 86-2 CPD ¶ 691. We have found that in certain circumstances bids should be rejected where they were submitted on an original IFB schedule instead of an amended bid schedule, although they expressly acknowledged amendments. See Technical Support Servs., Inc., B-227328.2, Oct. 2, 1987, 87-2 CPD ¶ 322, and cases cited therein. In those cases, the amended bid schedule specifically listed additional material work that was not included in the original IFB and bid schedule, and the bids were nonresponsive because it was unclear that the bidders bound themselves to perform the additional material work. Id.

Here, we find that amendment No. 4 did not impose any significant legal obligations that differed from those already required under the solicitation. While the protester argues that the amendment to the schedule added a new requirement, this is simply not the case. The original solicitation, base bid item No. 1, stated the following:


"[l]abor and materials for removal of underground storage tanks (UST) and associated wrk, complete. UST Nos. 14, 15, 29, 30, 31, 32, 33, 34 & 35."
(Emphasis added.)

The addition in the amendment of the phrase "and replacement" merely conformed the schedule to reflect an existing requirement already contained in the IFB specifications and drawings. Section H.1.d of the IFB stated the following:

"[a]ll work shall be in accordance with the drawings and specifications or instructions attached hereto and made a part thereof"

Several engineering drawings were included in the solicitation package, but only drawing Nos. 5120-1, 5120-3, 5120-4, and 5120-5 are relevant here. Drawing No. 5120-1, the tank location plan, contains the schedule for tanks to be removed and replaced; drawing No. 5120-3 contains the details for the removal and installation of tanks 14, 15, and 29; drawing No. 5120-4, removal and installation for tanks 30, 31, 34 and 35; and drawing No. 5120-5 removal and installation for tanks 32 and 33. The legend on each of these drawings and the project description in section H. 1.c of the original solicitation explicitly describe the work as the removal and replacement of USTs. D&K's bid, which acknowledged the amendment but failed to submit its prices on the amended bid schedule, does not take any exception to the IFB requirements. Since the initial IFB included specifications which required performance of all of the work covered by the revised schedule, D&K is obligated to replace the tanks under the IFB specifications and its bid is responsive. See Rocky Ridge Contractors, supra.

The protest is denied.


James F. Hinchman
General Counsel